IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 709 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GSRTC

Versus

SIKKANDARKHAN UMARKHAN PATHAN

Appearance:

1. Special Civil Application No. 709 of 2003

MR HARDIK C RAWAL for Petitioner No. 1

MR GK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 12/03/2003

ORAL JUDGEMENT

RULE. Mr.G.K.Rathod, the learned advocate for the respondent waives service of rule. Gujarat State Road Transport Corporation (hereinafter referred to as "the Corporation") has preferred this petition

challenging the judgement and award passed in Reference (LCV) No.1281 of 1999 dated 14.4.2001 by the learned Judge of Special Labour Court, Vadodara. The case of the petitioner corporation is that the respondent workman working as conductor with the petitioner corporation is in the habit of remaining unauthorisedly absent. In his service career so far he had 26 such instances and in the present instance he had remained unauthorisedly absent for 26 days. The petitioner corporation despite given sufficient opportunities to the respondent workman, did not find any improvement in the behaviour of the respondent workman, a charge sheet was issued and after departmental proceedings, the respondent workman was dismissed from service with effect from 13.2.1996. The matter was filed before the Industrial Tribunal, Vadodara. The learned Member of the Industrial Tribunal by judgement and award dated 14.4.2001 was pleased to allow the reference and held the order of dismissal unjust, unreasonable and illegal. The learned Judge was pleased to award 50% back wages and impose a very light punishment of stoppage of two increments without future effect.

2. Mr.Raval, the learned advocate appearing for the corporation submitted that the exercise of discretion under section 11A of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") was uncalled for as the same was without taking into consideration the past record of the respondent workman who had 26 instances to his credit of unauthorised absence. He further submitted that holding the workman guilty and imposing a punishment of stoppage of two increments without future effect on one hand and awarding of 50% back wages do not go together. Once the respondent workman is found guilty and he is punished, there is no question of awarding back wages.

3. Mr.Rathod, the learned advocate for the respondent submitted that the unauthorised absence was explained by the respondent workman. But even if the said explanation was not found satisfactory, the order of dismissal was in any case a very harsh punishment and was rightly interfered with by the learned Judge. Having heard the learned advocates, it is deemed fit that the present judgement and award of the learned Judge of the Labour Court, Vadodara be modified to the extent that the award of 50% back wages be quashed and set aside and punishment of stoppage of two increments without future effect be converted into stoppage of two increments with future effect. Order accordingly. The order of dismissal which is quashed by the learned Member of the

Industrial Tribunal is approved. The award of cost of Rs.750/-, is also quashed. The petition is allowed to the aforesaid extent. Rule is made absolute.

4. Mr. Rathod, the learned advocate for the respondent prayed that the petitioner corporation be directed to implement the modified award within a stipulated time. The petitioner corporation is directed to implement the modified award under this order within six weeks from the date of receipt of this judgement.

(Ravi R. Tripathi, J.)

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